UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
	.	Case No. 22-11238(LSS)
WINC, INC., et al,	.	
	.	
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
. . . . .	.	Tuesday, December 6, 2022

TRANSCRIPT OF HEARING ON FIRST-DAY MOTIONS
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings commence at 3:03 p.m.)

(Call to order of the Court)

THE COURT: Please be seated.

Good afternoon --

MR. LUNN: Good afternoon --

THE COURT: -- Mr. Lunn.

MR. LUNN: -- Your Honor. May it please the Court, Matthew Lunn from Young Conaway on behalf of the debtors, Your Honor.

First, thank you for setting today and this time for our first-day hearing with respect to the Winc, Inc. Chapter 11 cases. We filed three cases, Your Honor, Winc, Inc. and two of its subsidiaries, on November 30th of this year. And the lead case, Your Honor, just for the record purposes, is 22-11238.

Before I begin, Your Honor, as is customary, I'd like to make a few introductions to the Court.

THE COURT: That's fine.

MR. LUNN: With us today from Winc is the debtors' CFO Carol Brault. She is also the first-day declarant.

THE COURT: Yes. Welcome.

MR. LUNN: Debtors' proposed financial advisor is RPA, and with us today is Kevin Pleines.

Debtors' proposed investment banker is Canaccord, and Brian Bacal is with us today, Your Honor.

THE COURT: Yes.

MR. LUNN: And then I have a few of my colleagues from Young Conaway. Obviously, Mr. Nestor is sitting in the gallery back there. But we also have who will handle the first-day hearing and pleadings, Your Honor: Allison Mielke, Shella Borovinskaya, and Josh Brooks, Your Honor.

THE COURT: Yes.

MR. LUNN: Also, as is customary, but we really do mean it, we'd like to thank the Office of the United States Trustee, Jane Leamy, who we got the first-day papers to her, and as always, she was expeditious in getting us comments.

We've incorporated her comments with respect to the -- what I would call the "routine" first-days. I think there may be one or two issues left on the DIP order, but I'll leave that to the end. But I think we're pretty much resolved across the board there, Your Honor.

With respect to the game plan, what I would propose to do is set the stage for Your Honor, tell us -- you know, tell Your Honor where we are, what we have been doing, what we hope to do, and give Your Honor a brief overview of the debtors. But I'll keep it brief, understanding we're at, you know, midway through the afternoon and there's a lot to get through with respect to the agenda, Your Honor. And then I'd turn, obviously, the podium over to my colleagues to present the first-days, if that's acceptable.

THE COURT: That's fine.

MR. LUNN: Thank you.

So what is Winc, Your Honor? Winc is a direct-to-consumer retail and wholesale seller of wine, headquartered in Santa Monica, California. The business operations are through Winc, Inc. and BWSC, LLC.

Winc actually doesn't grow its own grapes, it doesn't own a vineyard, it doesn't have a bottling facility. Instead, what it does is it purchases grapes, it purchases also unfinished product after crush, so the juice, and it also finish -- purchases finished product. The sourcing of products, Your Honor, is done domestically in California, and also -- done also internationally.

In connection with the production of its wine, the company has two winemakers, but it also collaborates with other winemakers in the industry, vineyards and other manufacturers, then uses their collective knowledge to develop the underlying products that are then put onto the various -- excuse me, Your Honor -- the various labels.

Unfinished product, Your Honor, is shipped and transported to its processing facility in California. Finished products are shipped to either warehouse facilities in California or one that's literally over the border in Delaware County, right in Bethel Township, Garnet Valley area.

With respect to the direct-to-consumer online retail channel, Winc offers a subscription service. And Your Honor, we will hear more of that, I think from Mr. Brooks, in connection with the customer programs motion. But in really broad brushes, in exchange for being a member and paying a monthly fee of approximately $60, members are provided with a redeemable credit that they then use to purchase the wine. And they are also provided various incentives, special pricing offers, and other services as being a member.

Primary retail partners for Winc, Your Honor, are Whole Foods, Target, and Albertsons. And there are five core brands: Summer Water, Wonders, Lost Poet, Folly of the Beast, and Chop Shop.

The debt, Your Honor, not overly complicated. Sometimes we're used to seeing various tranches of debt. Here, we have one pre-petition secured credit facility with Banc of California. The principal amount is approximately -- approx -- excuse me -- approximately three and a half million dollars. The lien is substantially all of the debtors' assets.

THE COURT: Uh-huh.

MR. LUNN: Trade credit or unsecured credit is about $8 million, Your Honor.

THE COURT: Uh-huh.

MR. LUNN: The how and the why with respect to the

chapter --

THE COURT: Before you go on, since it wasn't clear to me from the declaration what the debtors' assets actually were, am I -- did I hear you correctly that they have a processing facility --

MR. LUNN: There is --

THE COURT: -- that's theirs?

MR. LUNN: There is a processing facility.

THE COURT: Okay. For the unfinished product.

MR. LUNN: Correct.

THE COURT: Okay. And so do they process all their product or do they also buy finished product and put a label on it?

MR. LUNN: Buy finished product and put a label on it, Your Honor.

THE COURT: Okay. Okay. And that goes to their two distribution facilities.

MR. LUNN: Correct. The finished product goes -- and then I would assume, once a product is finished, it goes to the distribution facilities or it's sold directly to customers through the online portals.

THE COURT: Okay. So that -- and that wine is sold either direct to consumer or to one of the --

MR. LUNN: Wholesalers.

THE COURT: -- wholesalers.

MR. LUNN: Correct --

THE COURT: Okay.

MR. LUNN: -- Your Honor.

THE COURT: Okay.

MR. LUNN: Again, the how and the why of the Chapter 11, Your Honor:

Over the last year, the company began to face significant liquidity pressures as a result of revenue dropping from the direct-to-consumer sales. There is a looming maturity date under the --

THE COURT: Uh-huh.

MR. LUNN: -- Banc of California facility of December 31st.

And during the time over the last year or so, the company has attempted to source new third-party financing or refinance Banc of California. Ultimately, those efforts in obtaining the third-party financing outside of a Chapter 11 process proved unsuccessful.

But during the same time line, the company engaged Canaccord. Canaccord was engaged in March of 2022 to explore various strategic alternatives. And during the last 8 to 9 months, Canaccord has contacted or had contact with nearly 50 parties; 20 of those parties are under NDAs. And as I said, while this marketing was being done, the company was attempting to refinance the facility.

Fast-forward a little bit, Your Honor, to mid November. And the company was pursuing an out-of-court merger transaction, entered into exclusivity with the party that is the proposed stalking horse bidder. During that time, the company made it clear that there needed to be some sort of bridge financing to get from merger documentation through a merger completion date.

The day before Thanksgiving, we thought we had an out-of-court deal. It ended up being an in-court deal.

THE COURT: Uh-huh.

MR. LUNN: And a week later, Your Honor, we filed Chapter 11 with funding being provided on an in-court basis from the stalking horse bidder to fund that process and so that the company could capitalize on that actual sale process with the stalking horse.

Your Honor, we did attach a copy of the LOI to the first-day declaration. And over the course of the past week, we've been involved in, I would call it "good faith and extensive negotiations" with the stalking horse purchaser to finalize an APA. We will finalize an APA tomorrow, Your Honor. And the goal was to file that APA tomorrow and then, obviously, ask for a shortened hearing with respect to bid procedures in accordance with the milestones of the DIP.

The headline number of that offer, Your Honor, is put in the LOI, it was $10 million --

THE COURT: Uh-huh.

MR. LUNN: -- for the sale of the assets, plus assumed liabilities, which also includes cure amounts with respect to the debtors' contracts.

Outside sale closing date, Your Honor, of January 20th, 2023.

As I mentioned, Your Honor, Canaccord has been involved for quite some time. And since we've flipped from an -- outside of the exclusivity period now into an in-court, Canaccord has re-instituted its reach-out and has made contact with 50 parties or so. And I would say this, Your Honor: It's that the debtors are very encouraged with the level of interest that has been received and has been conveyed to Canaccord.

So we're hoping for a competitive and open process, even though I know, Your Honor, it's somewhat shortened. But we think, given where the company has been, the liquidity situation and everything else, that it all will work, Your Honor. But we'll leave that for -- that's not before Your Honor today.

THE COURT: Uh-huh.

MR. LUNN: I understand that. But at the same time, you know, any debtor that files a case is trying to implement a restructuring strategy, Your Honor. And here, the debtors' restructuring strategy, to maximize value, is to

execute on an APA that's being backed by the stalking horse bidder, who's putting money right up front for us to execute on a sale process.

THE COURT: And who is the stalking horse bidder?

MR. LUNN: It's -- yeah. May I introduce Your Honor to counsel --

THE COURT: Mr. Miller.

MR. LUNN: -- for the stalking horse bidder?

THE COURT: Mr. Miller.

MR. MILLER: Good afternoon, Your Honor. For the record, Curtis Miller of Morris, Nichols, Arsht & Tunnell on behalf of Project Crush Acquisition Corp., LLC. I'm here with my co-counsel in the case, Eric Walker and Joe Brown from Cooley, and my colleague who I don't think you've met yet Evie Walker from Morris Nichols.

Nice to see you again in person --

THE COURT: Nice to see you.

MR. MILLER: -- after so long.

So Project Crush Acquisition Corp is an affiliate of AMASS Brands, Inc. You know, they are in the beverage industry, as well.

THE COURT: Okay.

MR. MILLER: Just so you know -- and I was going to raise this in connection when we were talking about the DIP -- the CEO of AMASS Brands, Mark Lynn, he was a cofounder of

what is now Winc. He has no affiliation with the entity at this point. He was affiliated with them between August of 2011 and December of 2013 and he sold his last of, I think there were some convertible notes, in 2015. So there's no contractual or equity or other arrangement with him.

Obviously, he thinks highly of the business and wants to make a bid for the assets and came into this case because no one else was willing to provide the funding and we needed to get to a sale, Your Honor.

THE COURT: Okay.

MR. MILLER: So that's why we're here.

THE COURT: Thank you.

MR. MILLER: Does that answer your question?

THE COURT: Yes, it does. Thank you.

MR. LUNN: Your Honor, those are all the remarks I had planned. Unless Your Honor has any questions, what I would do is cede the podium to Mr. Brooks to walk Your Honor through at least half of the agenda.

THE COURT: Okay. That's fine.

MR. LUNN: Thank you.

THE COURT: Mr. Brooks.

MR. BROOKS: May it please the Court. Good afternoon, Your Honor. Again, Joshua Brooks from Young Conaway on behalf of the debtors.

I'll be presenting Items 2 through 8 on today's

agenda. I also note that we do have blacklines of the DIP order and the termsheet, if you'd like me to hand those up at this time.

THE COURT: I have those.

MR. BROOKS: Okay.

THE COURT: Thank you.

MR. BROOKS: Wonderful. Thank you.

At Item Number 2, we have the first-day declaration, a declaration of, again, Carol Brault, who is the CFO of the debtors. And we rely on this declaration for the relief that we seek today. So, obviously, she's here, available to testify should there be any questions.

Next on the agenda we have Item Number 3, the debtors' motion for joint administration.

We have three debtors here who are "affiliates" within the meaning of Section 101(2) of the Bankruptcy Code. Accordingly, Bankruptcy Rule 1015 and Local Rule 1015-1 provide that consolidation, for procedural purposes, is warranted, given that the motions, orders, and hearings will affect all of these debtors jointly and provide a single docket for interested parties to see new items on the agenda -- I'm sorry -- on the docket.

Unless Your Honor has any questions, we ask that the Court enter the order at this time.

THE COURT: Thank you. I do not have any

questions.

Does anyone wish to be heard with respect to the joint admin motion?

(No verbal response)

THE COURT: I hear no one.

I've reviewed it. It's appropriate and I will sign it.

MR. BROOKS: Great. Thank you, Your Honor.

Before I proceed further, I would like to move the declaration of Carol Brault into evidence.

THE COURT: Does anyone object?

(No verbal response)

THE COURT: I hear no objections. It's admitted without objection.

(Brault Declaration received in evidence)

MR. BROOKS: Great. Thank you.

Item Number 4 on the agenda, we have the debtors' application to appoint Epiq Corporate Restructuring, LLC as its claims and noticing agent.

In this case, we have more than 200 creditors; and, therefore, Local Rule 2002-1(f) requires the appointment of a claims agent.

The debtors have complied with the claims agent retention protocol and solicited three proposals and selected Epiq based on its competitive pricing structure, as well as

its expertise.

In support of the application, we have submitted the declaration of Brian Hunt, who is a consulting director with Epiq, as Exhibit B.

And unless you have any questions, Your Honor, we ask that the Court enter -- approve the application.

THE COURT: I do not have any questions.

Does anyone wish to be heard with respect to the retention of Epiq as claims agent?

(No verbal response)

THE COURT: I hear no one.

I have reviewed the application and I note that the debtor has complied with the custom here and I will approve it.

MR. BROOKS: Great. Thank you, Your Honor.

Next on the agenda, we have Item Number 5, the utilities motion and adequate assurances motion. Sorry.

By this motion, the debtors seek entry of an order prohibiting utility providers from terminating service, as well as approval of certain procedures for adequate assurance of future payment.

The debtors, in their ordinary course of business, use telecommunications, internet connectivity, and waste disposal services, and propose to deposit $2,175 into a segregated account. That's approximately half of the

debtors' monthly spend.

We believe that the procedures proposed here are consistent with Section 366 of the Bankruptcy Code and also consistent with other procedures routinely approved in this district. And also, we believe that, absent the relief sought here, the debtors will suffer immediate and irreparable harm.

Unless Your Honor has any questions, we request that the Court enter the interim order at this time. Sorry. There is no interim order.

THE COURT: No, this should be an interim.

(Participants confer)

MR. BROOKS: Oh, apologies.

THE COURT: Okay.

MR. BROOKS: There is an interim order.

THE COURT: Yes.

MR. BROOKS: Thank you, Your Honor.

THE COURT: Does anyone wish to be heard with respect to the utilities motion?

(No verbal response)

THE COURT: I hear no one.

I've reviewed it. I agree that it is in line with these types of orders and it is necessary to avoid immediate and irreparable harm and required by the Code in order to provide adequate assurance to utilities.

So the only thing I think we need is a final hearing date --

MR. BROOKS: If I may --

THE COURT: -- with respect --

MR. BROOKS: -- Your Honor?

THE COURT: -- to the order. Have we settled on that?

MR. BROOKS: Yes, Your Honor, we have. January 6th at 2 p.m. And I understand that the revised orders have incorporated that final hearing date, as well as the referenced docket numbers, and those have been uploaded.

THE COURT: Okay. I see that on the calendar, so Ms. Johnson has you in there. Okay.

MR. BROOKS: Great. Thank you, Your Honor.

The next item we have, Number 6, the taxes motion.

The debtors operate in several jurisdictions and pay sales and excise taxes, in addition to regulatory taxes and fees, as well as foreign taxes and fees. They typically make these payments monthly or on a quarterly basis in the ordinary course. And as of the petition date, the debtors estimate that they owe $450,000 in un-remitted taxes and fees that are not catch-up payments. Therefore, the debtors are seeking authority to pay $350,000 pursuant to the interim order.

And we believe that the relief warranted -- I'm

sorry -- the relief here is warranted under the doctrine of necessity, so that it may preserve and maximize the estate's value and present -- prevent -- excuse me -- unnecessary exposure to adverse consequences against the debtors or their management. Therefore, the debtors believe that the immediate and irreparable harm standard has been satisfied and request that the interim order be entered at this time.

THE COURT: Does anyone wish to be heard with respect to the taxes motion?

(No verbal response)

THE COURT: I hear no one.

The only question I have is whether -- not whether, I guess -- but where the taxes are reflected in the budget, in terms of an ability to pay. We're starting to get into some big numbers here, and I know liquidity is tight. I just didn't see it in here.

MS. MIELKE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. MIELKE: Allison Mielke with Young Conaway on behalf of the debtors.

As far as I'm aware, these tax payments are in the line item for selling costs.

THE COURT: Okay.

MS. MIELKE: You'll see in the initial 12/9 -- week ending 12/9, there's six hundred and thirty there.

THE COURT: Okay.

MS. MIELKE: Thank you.

THE COURT: Thank you.

Okay. I have reviewed the motion and the form of order (indiscernible) no. And with respect to the taxes, if my recollection is correct, most of them appear to be sales taxes, which are collected and owed to the respective authorities; and, therefore, I think it is appropriate, to the extent that those taxes are even the debtors' property, for them to flow through to the appropriate authorities and to ensure that there is no personal liability for management for those taxes collected.

The remainder of the taxes, for similar reasons, I will approve.

So, there being no objection -- again, this is on an interim basis. And what is being paid should be what comes due, what falls due during this period. And I will approve it as necessary to avoid immediate and irreparable harm.

MR. BROOKS: Great. Thank you, Your Honor.

The next item we have is Item Number 7 on today's agenda, the debtors' cash management motion.

The debtors use a fully integrated cash management system, including the use of a corporate credit card. The debtors also maintain two bank accounts at Banc of

California, which is a party to the Uniform Depository Agreement with the United States Trustee's Office, and it's also FDIC insured. By this motion, the debtors seek authority to continue use of their cash management system, as well as to continue ordinary course intercompany transactions among the debtor affiliates.

The relief here is vital to afford the debtors a seamless transition into these Chapter 11 cases, and it's also necessary to prevent immediate and irreparable harm. Therefore, the debtors request that the Court enter the interim order for a cap of $800,000.

Unless Your Honor has any questions ...

THE COURT: The only question I had was the same, with respect to the budget. I assume it's in here?

(Participants confer)

MS. MIELKE: It is, Your Honor. There's a -- it's kind of broken throughout, so it's part of inventory expenses, it's part of G&A and other. And there might be a little bit in inventory expense, but it's kind of throughout, sprinkled throughout. And that 800,000 is coming due in the interim period.

THE COURT: Okay. Thank you.

Does anyone wish to be heard with respect to the debtors' cash management motion?

(No verbal response)

THE COURT: I hear no one.

I have reviewed it. As counsel noted, it's not a complicated cash management system. I thought it might be complicated when we didn't have the bank on board, but the bank appears to be on board, and they aren't objecting, so it's appropriate. I will grant the motion.

And I have no objections from the Office of the United States Trustee, which I know scrutinizes these motions in particular. So it will be granted.

MR. BROOKS: Great. Thank you, Your Honor.

The last item I'm presenting today is Item Number 8, the debtors' vendors motion.

The motion sets out the debtors' distribution network, which relies very heavily upon the cooperation and assistance of key contributors to the production, storage, labeling, marketing, and distribution of the debtors' wine products, as well as to the administration of their operations.

Essentially, the debtors employ winemakers and vineyards to produce their wine, and then bottlers and laborers -- I'm sorry -- labelers, who package them before they are stored or shipped at their warehouses across the two states you heard earlier, Santa Monica, California and Garnet Valley, Pennsylvania.

I assure you that none of the vendors who would be

paid pursuant to these orders are -- would otherwise be retained as an ordinary course professional or under 327, Section 327 of the Bankruptcy Code. And absent the relief, operations of the debtors' businesses would surely halt and render all of these Chapter 11 efforts null; therefore, the debtors submit that the immediate and irreparable harm standard has been satisfied and requests entry of the interim order at this time, unless, of course, Your Honor has questions.

THE COURT: Does anyone wish to be heard with respect to the critical vendor motion?

(No verbal response)

THE COURT: I hear no one.

This is a large number, a three-million-dollar number, in connection with this case. As I understand it, the trade is 8 million, so it's not insignificant. Is all of this coming due during the interim period?

MR. BROOKS: Yes, Your Honor.

(Pause in proceedings)

MR. BROOKS: Your Honor, if I may.

THE COURT: Uh-huh.

MR. BROOKS: Most of it is on account of inventory, which is very important to the debtors' success in these Chapter 11 cases. Obviously, without it, we wouldn't have a product to sell.

THE COURT: Well, is it inventory -- if it's inventory, it's what the debtor already has, right? Or is in the process or what is it?

(Participants confer)

MR. BROOKS: It's a bit of both, as I understand.

THE COURT: And does this (indiscernible) how much of this is sitting in a warehouse that -- where someone has a lien on it?

MR. BROOKS: The debtors estimate that approximately 1.82 million are on account of lien claims, potential lien claims.

THE COURT: Okay. Well, I'm not hearing any objection. And while it's a large amount, it is supported by Ms. Brault's declaration. And I take it that -- again, that somewhere in the budget we have that $3 million. One nine -- one eight or one nine is potential liens (indiscernible) so I will permit it. I believe the declaration indicates that the debtors scrubbed their books to determine what was necessary to pay, in terms of critical vendor.

And I will approve it on an interim basis, subject, of course, to review on a final basis, as necessary to avoid immediate and irreparable harm and to ensure that the debtor continues to have inventory to be able to sell to its customers or to provide to its customers who have already, either purchased it, or are turning in their credits for

wine.

MR. BROOKS: Great. Thank you, Your Honor.

Those are all of the motions I'm presenting today. And at this time, I'll cede the podium to Ms. Shella Borovinskaya.

THE COURT: Thank you.

MR. BROOKS: Thank you.

MS. BOROVINSKAYA: Good afternoon, Your Honor. May it please the Court, Shella Borovinskaya from Young Conaway, proposed counsel to the debtors.

Your Honor, it's great to be back in your courtroom today, albeit in a different role this time around. I will be presenting Items 9 through 11 on the agenda for Your Honor's consideration.

Item 9 is the debtors' insurance motion. Through this motion, we ask for the authority to continue our insurance programs and to pay any premiums on account thereof.

Your Honor, in connection with the debtors' business, they maintain a host of insurance policies which you can find attached to our motion at Exhibit C. Three of these policies are financed with First Insurance Funding, and the PFA is attached to the motion at Exhibit D.

As Your Honor is aware, the United States Trustee guidelines for Region 3 require the debtors to maintain

insurance, which certain of these policies provide. In addition, under Section 1102(b)(4)(C), the failure to maintain insurance is cause for conversion to a Chapter 7.

Your Honor, at this time, the debtors believe that insurance coverage is essential for preserving the value of their assets, and we believe that the inability to continue our insurance program and to pay amounts on account thereof would provide the debtors with immediate and irreparable harm.

Unless Your Honor has any questions about the debtors' insurance policies and their program in general, we ask that the Court enter the order approving the motion.

THE COURT: Thank you. I don't have any questions.

Does anyone wish to be heard with respect to the insurance motion?

(No verbal response)

THE COURT: I hear no one.

I have reviewed it. I note the amount that the debtors are seeking authority for on an interim basis is $65,000. Counsel is correct that the debtors need to remain insured in order to, not only protect their assets, but to comply with the Code and the requisite rules. And I will approve this as necessary to avoid immediate and irreparable harm.

MS. BOROVINSKAYA: Thank you, Your Honor.

The next item on today's agenda is the debtors' customer programs motion.

Your Honor, the debtors' customer programs are intended to enhance customer loyalty, drive sales, and improve customer relations. Your Honor can view the debtors' customer programs as two fold:

On one side, the DTC side, the debtors, as you've heard before, have their membership subscription programs. Their insider membership works where their customers pay a fee, approximately $60, and they -- the debtors receive in cash, and the customers receive a dollar-for-dollar credit in their account that they can then later redeem for the debtors' wine. There is also a legacy membership, where customers pay a monthly fee and are shipped wine on an automatic monthly basis.

On the other side, we have our wholesaler distributor incentives. The debtors provide their distributors with samples of wine that those distributors then use to sell the debtors' products. In addition, the debtors honor their distributors' profit margins when selling to national accounts, such as Targets or Walmarts.

In addition to these core customer programs, the debtors also offer their customers and non-customers the ability to purchase gift cards, which they can then redeem for the debtors' products at their websites.

And in addition, the debtors also provide routine customer programs, such as refunds and exchanges for their DTC customers. Wholesalers are not able to return or exchange the products.

Your Honor, by this motion, we also seek to serve the DTC customers electronically via email. When these customers sign up for the debtors' membership programs, they provide the debtors with their email, which the debtors then keep on record and use as their exclusive method of communication with these customers. We believe that their customers expect to receive notice via email and we believe that the relief is warranted at this time.

We believe that Section 105(a) and Rule 2002(m) authorize Your Honor to grant the relief requested, given the large customer base, coupled with the fact that the debtors are facing a severe liquidity crisis and also have accurate and reliable emails on record for all of their customers.

Your Honor, at this time, we are seeking to pay $191,000 on account of customer programs, and this is on account of returns and chargebacks.

At this time, we respectfully request the Court to enter the order approving the motion, unless Your Honor has any questions.

THE COURT: Okay. Well, one of my questions was what you anticipate during the interim period, which I do see

in the form of order. And maybe that's all I need to know right now. We'll deal with the rest of it at the -- at final.

Does anyone wish to be heard with respect to the customer program motion or the request for notice, in particular?

(No verbal response)

THE COURT: Okay. I hear no one.

It's apparent that the debtors need to ensure that their customer base remains intact, and to do that, it needs to provide -- continue to provide the benefit it provides to its customers through the various programs.

And during -- it's not an insignificant sum overall on these -- on the programs overall, but in the interim, it's $191,000. It's certainly necessary to keep the customers in place.

As far as the electronic notice, I'm going to permit it. I've only permitted it on occasion. But given the nature of the relationship, as explained by the debtors, that that's the way that there's normal communication with these particular customers, I'm going to permit it. If there is a customer who would prefer regular mail or other type of notice, then they can contact the debtors, and I assume that notice will be changed to the way that the customers prefer it.

But I do think -- I'm going to look at the rules. But even with that, I do think I have the ability, where this is the primary method of communication and the expected method, to approve that notice, and I will certainly do it on this interim basis. And if anybody has a problem with it, I'll revisit it, but I think it's appropriate.

MS. BOROVINSKAYA: Thank you, Your Honor.

The last item that I'll be presenting for Your Honor's consideration is the debtors' employee and wages motion.

Your Honor, the debtors' employees are critical to the success of the debtors' business. Currently, the debtors employ approximately 77 individuals, 53 of whom are salaried, full-time employees, and 22 of which are hourly full-time employees. The debtors made payroll on November 28th and November 25th, and their next payroll for their biweekly hourly employees is due this Friday

Your Honor, in addition to our 77 employees, we also have 89 supplemental workers that provide services to the debtors. Some of the services that they provide are supplemental work in their warehouses, as well as finance and customer service.

Your Honor, in connection with the debtors' role as an employer, the debtors provide their eligible employees a host of employee benefits that are described in detail in our

motion. Some of these benefits include health benefits, reimbursable employee expenses, flexible spending accounts, and the like. Through this motion, we are seeking the authority to continue to administer those benefit programs and to pay amounts on account thereof, such as wage deductions, payroll taxes, and other taxes that are due to governmental entities.

Unless Your Honor has any questions about the debtors' employees and their wages, we respectfully request that the Court enter the order approving the motion.

THE COURT: The motion mentions staffing agencies, so I take it that's where the 89 supplemental workers come from.

MS. BOROVINSKAYA: Correct, Your Honor.

THE COURT: Okay. And it is not clear to me whether any amount in this on an interim basis is for staffing companies.

MS. BOROVINSKAYA: Your Honor, $40,000 of the 465,000 that we're seeking is on account of the payroll that's due this Friday and 425,000 is on account of the staffing agencies.

THE COURT: Does anyone wish to be heard with respect to the employee wages motion?

(No verbal response)

THE COURT: I take it the debtors are going to

continue to need the 89 employees that are provided by the staffing agency?

MS. BOROVINSKAYA: Yes, Your Honor.

THE COURT: Okay. I will -- those are the questions that I had. As you can see, I reviewed the motion and, clearly, it's necessary for the debtors to retain their employee base, and that employee base is -- includes more than half is staffing -- is provided by staffing agencies. So, under those circumstances, even though I think that's a significant number going to the staffing agency, which has a different relationship with a debtor than employees do, direct employees do, I will approve on an interim basis the -- as requested and with the cap set forth in the order, the amounts requested to avoid immediate and irreparable harm.

MS. BOROVINSKAYA: Thank you, Your Honor.

And with that, I will cede the podium to my colleague Ms. Mielke.

MS. MIELKE: Good afternoon again, Your Honor. Allison Mielke with Young Conaway on behalf of the debtors.

We'll turn now to the last item on the agenda, Number 12, the hearing to consider approval of the debtors' motion for use of cash collateral and granting adequate protection to the pre-petition secured lender and interim approval of debtor-in-possession financing.

As we've mentioned before, this motion is supported

by the declaration of Carol Brault, who is present in the courtroom today.

I think, at the outset, we're all very pleased to announce that we do have an agreement on the consensual use of cash collateral, so that should make today's hearing much easier. As a result of that, there were substantial changes to the order that we filed. And in addition, we did have an informal comment this morning from a vendor.

The motion -- or excuse me. The blackline that we filed this morning did incorporate all of the comments until about eleven o'clock --

THE COURT: Okay.

MS. MIELKE: -- and then we did make one additional comment. So, if I may approach, we do have an updated cumulative blackline.

THE COURT: You may. Thank you.

MS. MIELKE: May I proceed?

THE COURT: You may.

MS. MIELKE: Thank you.

The headline, Your Honor, is that the DIP lender will be providing financing *pari passu* to the pre-petition lender. The debtors will provide both of these parties with certain liens, claims, and expense reimbursements. Those expense reimbursements are primarily for professional fees, and there is a provision in the order that provides for

notice of those fees.

Additionally, both of those lender parties will consent -- or will have certain consent rights.

If it pleases the Court, I'd like to briefly set the table and just provide a little bit of background, hopefully that's not duplicative of what Mr. Lunn has already said, to explain the debtors' need for financing and how the stalking horse bidder came to be.

As stated in Ms. Brault's declaration in conjunction with the DIP budget, the DIP budget and the declaration itself establishes unequivocally the need for financing here. And as Your Honor has already indicated, there are substantial payments that are coming due on an interim basis. I'll just run through, quickly, a couple of those:

As you mentioned, $445,000 in wages and benefits;

Tax payments, several hundred thousand dollars;

Significant obligations on account of inventory;

Rent, which actually came down -- due on the 1st;

And substantial shipping costs.

So a lot of the critical vendor relief is a mix of three things, but it's inventory, it's shipping costs to actually ship goods to customers, and also that's sort of tied up with lienholder claims, as well.

As Mr. Lunn mentioned, the debtors have been

seeking a third-party source of financing since March. Ms. Brault has led the charge on behalf of the debtors to see a third-party source after they approached Banc of California and were denied additional funding.

The debtors were turned down on several occasions. They entered into two termsheets, one in July, I think, somewhere in the middle of the summer, and then most recently in the fall. And both of those termsheets fell through, ultimately, the second as a result of just really predatory type terms, and the first just as a result of the lack of interest for the lender.

The pre-petition lender in these cases worked with the debtors over the last approximately ten months to gradually step down the repayment -- to step repayment over the course of ten months. The debtors have faithfully been making those payments, but as we all know, ran out of cash and were unable to make the payment that was due on December 1st.

The debtors also require financing to support a sale process in these cases. As Mr. Lunn indicated in his presentation, the debtors are -- have determined that the best way to proceed and to maximize value of these assets is to engage with the stalking horse bidder to have the financing to support the sale process and run a public auction process, so that we can engage additional interested

parties in a distressed situation.

While these assets have been on the market for now for about nine months, we are hopeful that there will be additional interest going forward. And that has borne already. Our -- we are told from Canaccord, the debtors' investment banker, that there has been substantial interest and we, as well have been getting significant inbounds.

That said, as you'll note and have noted already, there are substantial costs in these cases. There's not a lot of runway here. And we believe that the time line, which I will get into shortly, is appropriate for a couple of reasons:

The first is to allow these assets to be marketed in a sort of post-petition, free, you know, auction type of scenario.

But that said, given the amount of time that these mark -- these assets have been marketed, it really should be a short period of time because there isn't a lot of time to waste and there's no money to waste.

The debtors' investment banker -- and I'll just turn back. At the time of the petition date, kind of leading up to the petition date, Mr. Lunn noted that we were working with the stalking horse bidder on an out-of-court merger agreement.

THE COURT: Uh-huh.

MS. MIELKE: That ultimately pivoted to an in-court transaction. But even at that time, the stalking horse bidder was the only horse around to -- or any game in town, really, to provide financing and bridge financing. So they really -- the debtors really were kind of out of options at that point.

Your Honor, I'll turn to the terms of the facility. I'll just provide a brief overview because I know how carefully you look at these, and I'm sure you understand all of the terms --

THE COURT: Uh-huh.

MS. MIELKE: -- at this point. But I'll go over it a little bit. And then, if Your Honor -- we can go through the blackline, if that makes sense.

THE COURT: Uh-huh.

MS. MIELKE: The debtors are proposing to enter into a superpriority senior secured multi-draw term loan. The full amount of the loan is $5 million with a 2 million draw on an interim basis.

THE COURT: Hasn't --

MS. MIELKE: It's con --

THE COURT: Hasn't that changed to a *pari passu* loan?

MS. MIELKE: Did I -- yes, Your Honor --

THE COURT: Okay.

MS. MIELKE: -- it has. Apologies.

The DIP facility is contemplated to terminate on January 20th. It could, obviously, terminate earlier for a handful of reasons, including events of default and failure to meet milestones, but that is the date that everybody has circled for a closing.

The milestones include entry of -- a deadline of tomorrow for entry of an interim order for the DIP financing, and then also to file a bid procedures motion.

There is a deadline on Wednesday to file an executed asset purchase agreement, which we believe we are capable of meeting.

There is customary milestones for entry of a final order, that's on 28 days; and then the sale order, which is 45 days, which is quick. But as we have noted, we think there are exigent circumstances here that necessitate that time line.

Note there's also a deadline, which we have already discussed, about entry of the bid procedures order, and that's 22 days from the petition date. While that is on shortened notice -- and certainly, Your Honor, we will be filing a motion to shorten and can raise this issue, if and when needed, we believe that filing the LOI with the first-day dec. on the first day really put it out in the market. And certainly, the information that we've put in the first-

day dec. about where this is going, in terms of the sale process and the shortened sale process, that parties are on notice of that this is going to be a sale and that we want to do it quickly.

In these -- in this instance in particular, the parties that are interested in this asset, this sort of wine program, it's a small community. And we think that the people have been sort of circling these assets for the last few months are likely to be the parties that will be interested in an asset sale -- or excuse me -- in a going concern sale. So we think it's contemplated and reasonable that these parties could get bids in by -- excuse me -- that the bid procedures could be approved at that time, and that is an appropriate time line for those people.

I think what isn't apparent in the pleadings, we actually anticipated that that time line would be shortened, but we did speak with the United States Trustee in advance of this hearing for some concerns about when a committee might be appointed.

THE COURT: Uh-huh.

MS. MIELKE: And so we pushed that a week later. So we think that we've attempted to address that concern. Obviously, we can address other concerns if they arise.

THE COURT: Let me ask, since you talked about a committee. What kind of notice is being given to the

shareholders here? How are they being advised of what's going on?

MS. MIELKE: Well, there has been press releases. We have put together a communications package to, you know, inform people that are asking. There will be a notice of commencement that goes out to every committee -- or excuse me -- every equity holders, so they have notice of the cases.

(Participants confer)

MS. MIELKE: Oh, yeah. Excuse me. Mr. Lunn is indicating that there's been some SEC filings done as a result of the Chapter 11 cases, so -- and consistent with those reporting obligations, given that this is a public company, there will be periodic reports that are filed with any material updates in the case.

And I would say that's topically how the equity holders, given that this is such a widely held company, typically communicates and learns of updates about the company. There's been a lot of inbound traffic from equity holders at this point. So, you know, I don't -- I can't say that my opinion matters for anything, but I will tell you I can confirm that there's been a lot of traffic and interest about it. And it seems pretty clear to me, anyway, that that communication is -- has been successful.

THE COURT: I ask because of the short time line that the debtor is requesting here.

MS. MIELKE: Yeah.

THE COURT: I don't know when the notice of commencement of case goes out normally, but it's not like today, so that's why I ask. And it's something for the debtors to think about, in terms of ensuring that there is some method by which the shareholders know what's going on.

MS. MIELKE: Yeah, understood. I think there's nothing else really to say there, Your Honor. But we will -- we understand the concern and we'll address it.

Your Honor, there's -- just turning back to the highlight of some of the terms. There's fees and expenses included and contemplated. The DIP lender is charging customary fees of about two percent, and there's expense reimbursements, as I've mentioned before. Those are all going to be PIK'ed and paid from the sale proceeds.

The DIP loan accrues interest at 14 percent.

Of course, there's also customary liens and claims that are being granted to the DIP parties -- or to the DIP lender and the pre-petition lender.

There is a carveout for professional fees and disbursements, as is customary, and the U.S. Trustee fees are included in that.

And then both lenders are reserving their right to credit bid.

Your Honor, I'm happy to answer any questions you

have. I'm happy to go through the blackline from top to bottom, if that's helpful; or, if you have direct questions that you'd rather us just answer, we can do that, as well.

THE COURT: I have questions. We can take a turn through the revised order. But can you tell me -- and the one I've looked at is what Ms. Johnson gave me after my morning hearing.

So can you tell me what's new in what you just handed up?

MS. MIELKE: I can. I, of course, will not be able to find that easily. Here we go. Page -- I think it's Page 20 and 21.

(Participants confer)

MS. MIELKE: As far as I'm aware, the change was to paragraph -- on the top of 21. Are you at 21? And then I'll describe further. So, at the end of DIP liens, there was a proviso there that addressed PACA claims. And the party that was it was actually included for didn't particularly care for that language, and so we took it out.

THE COURT: That was one of my questions, actually, is whether there are any PACA/PASA claims. I don't know anything about wine, the wine industry and PACA claims, so ...

(Participants confer)

MR. MILLER: Good afternoon, Your Honor. For the

record, Curtis Miller of Morris Nichols.

So the language, what's intended there, is we don't know. But we did get an inbound that said there are these PACA claims, PACA trust claims that may exist.

THE COURT: Uh-huh.

MR. MILLER: We don't know anything about them. But the idea here was just to not prime them today, have language that says we're reserving your right to make the argument, if you're valid, you have a trust claim, then we'll deal with it at that point in time, but we're not seeking to do anything to you on an interim basis.

THE COURT: Okay. And is there language that says that, or is that -- because that seems like the appropriate way to handle this today, that we're not priming it.

(Participants confer)

THE COURT: In fact, I think, among the --

MR. MILLER: There is, Your Honor. It's in the -- it's in the order.

(Participants confer)

MR. MILLER: Paragraph 8 is the DIP liens and priority.

(Participants confer)

MR. MILLER: And they are -- they're effectively a permitted lien. And this was the language that was signed off on by their counsel.

MS. MIELKE: Subsection 8.2, Your Honor, talks about junior liens. And then the Subsection 3 talks about first priority liens on DIP collateral, and it only extends to the loans held by the pre-petition secured party, so that the DIP liens aren't priming any valid lien or any valid lien existing as of the petition date.

THE COURT: Okay. So it's implicit.

MS. MIELKE: It doesn't have to spell out PACA, no.

THE COURT: Okay.

MS. MIELKE: But it does talk about those types of liens explicitly in that paragraph.

THE COURT: Okay. That's fine.

I do think that somewhere else -- and I hopefully marked it -- well, I guess not PACA claims, maybe reclamation claims were not excluded from priming, so we'll get to that.

Let me ask. Does -- before we start going through the order, does anyone wish to be heard? Ms. Leamy.

MS. LEAMY: Good afternoon, Your Honor. Jane Leamy for the U.S. Trustee.

There's a couple open points we think, and I think -- so Paragraph 14, the challenge period, has been reduced to 40 days from the customary 75 following the date of interim order, so we have a concern with that.

THE COURT: Uh-huh.

MS. LEAMY: And then Subparagraph (c) states that a

"challenge" means with respect to any party that has obtained standing to commence. And I think before it had said "filed a notice seeking standing." So we'd prefer the original language.

And then the -- just overall, Your Honor, I do appreciate the parties making an adjustment to the date that the bidding procedure be entered. Hopefully -- you know, we've had some responses to the committee solicitation so far, so I'm hopeful we'll be able to form a committee. And hopefully, that will be by early next week.

But -- so they moved the bidding procedures out, but not the sale order deadline, which is 45 days after the petition date, which I think brings us to around the end of the second week of January. And I -- you know, I'm sure that's not the shortest the Court has ever seen, but given that it's over a holiday period -- I do recognize that there's been a long marketing here, but it's -- it just seems really short, so ...

THE COURT: Okay.

MS. LEAMY: Thank you.

THE COURT: Thank you.

MR. MILLER: Good afternoon again, Your Honor. Curtis Miller for the record.

I just wanted to point out a couple of things, so that you had the full sort of view of how we got here, where

we are at currently, and where we're trying to go.

So, first, our DIP is an all new money DIP. We were not a pre-petition lender.

THE COURT: Right.

MR. MILLER: We're not seeking to roll anything up, we're not trying to cross-collateralize anything. And when we bid at the auction, it's going to be new money and a credit bid of our DIP, which was also new money. So, when we talk about the sale happening on January -- and we'll get to this in connection with the bid procedures hearing -- we are talking about a new money purchase of the assets, so we have that in place.

Obviously, we're very happy to have gotten here with Banc of California, you know, filed on the first day as a priming DIP. No one really wants to have a priming fight on day one. We didn't want to have one, although we thought we had some good arguments. They would have some arguments, as well. And we worked really hard over the weekend and we appreciate their assistance in getting to where we're at today, and also with Ms. Leamy.

In the order I hope that you saw, it actually came in clean, we tried to take your various comments over the years and bake those into the order. I'm sure you still have some questions, but we did try to address the points that you have had over the years and put those in the order, so that

they weren't concerns of yours.

I think that's really the comments I wanted to make. And we're happy to, you know, answer some of the questions that you have, if you have some. But also, obviously, some of the questions, particularly the ones that Ms. Leamy had, are not with respect to us because we were not a pre-petition lender --

THE COURT: Right.

MR. MILLER: -- in this case.

THE COURT: Right.

I will hear from anybody who wants to justify the shortened challenge period, in terms of -- and the issue of standing.

In terms of the sale date itself, I'm going to wait. We'll address that at the bid procedures, when, hopefully, we will have a committee in place. I'm pleased to hear that the solicitation has already occurred, and hopefully, we'll have them on board soon.

Mr. O'Neill.

MR. O'NEILL: Yes, Your Honor. Good afternoon. James O'Neill, Pachulski, Stang, Ziehl & Jones on behalf of Banc of California, appearing today, the pre-petition secured lender.

THE COURT: Yes.

MR. O'NEILL: And also with me, by Zoom, are my

partners Max Litvak and Richard Pachulski.

Mr. Litvak is going to address the Court with respect to the challenge period and related issues.

THE COURT: Okay. Thank you.

MR. LITVAK: Good afternoon, Your Honor. Max Litvak, Pachulski, Stang, Ziehl & Jones, on behalf of the bank, Banc of California. Good to see you again, Your Honor.

I just wanted to set the stage briefly. And just to clarify, our -- my client, our client is not a bidder here. We actually didn't reserve rights to credit bid. That's not something that we're interested in.

The only thing we were interested in is we added a proviso that, if the DIP lender credit bids, which is fine, and they put in their $5 million of new money and they credit bid, that they also put in enough cash to pay us off. That's really, at the end of the day, the only thing that the bank is looking for is full and final payment.

And it's not a huge amount of money, relatively speaking, three and a half million dollars or so of principal, plus the various fees and costs and so forth that will be added on to that.

But it's a pretty think case when you think about it, Your Honor. The five-million-dollar DIP, three and a half million dollars, roughly, of Banc of California pre-petition debt, you're at eight and a half million. And you -

- if you layer on the various fees, the closing fee under the DIP facility, the interest at fourteen percent, the legal fees on both sides, you know, call it another million dollars, you're at nine and a half out of the ten, so it's a -- so it's a very thin case.

THE COURT: Uh-huh.

MR. LITVAK: So, from our perspective -- you know, and when we first saw this and we saw that the DIP lender was coming in and attempting to prime us, you know, we could have been more adversarial about it. Actually, my partner Mr. Pachulski, who's also on the line, came up with the idea of, hey, let's let -- let's not just fight this and get in the way and potentially cause a Chapter 7 filing or something bad to happen here, let's see if we can do a Chapter 11 sale, let's see if we can preserve the business, maximize the value of the assets for the benefit of all the parties, including Banc of California. And thankfully, the DIP lender was agreeable to that, to do it on a *pari passu* basis, and we came up with that and they agreed, and that's what's incorporated here, which we think is fair under the circumstances.

And like I said, it's not without risk on all sides because it is kind of a close call. And hopefully, it will be a successful bidding process and there is overbidding and we don't have worry any -- about any of it. But that's where

we were, that's where we're coming from, Your Honor, is we just want to get paid off as soon as possible on the full amount of our debt.

But pending that, we've agreed on a set of adequate protection, which includes the *pari passu* liens that were mentioned. And in addition to that, we're going to get our fees and we're going to accrue default rate interest. So long as we're over-secured, we're going to be entitled to the default rate interest. And so I think it behooves everyone and it's in the interest of the estate to pay us off as quickly as possible.

So, with respect to the challenge period -- and we heard just before the hearing that the U.S. Trustee has an issue with that, not entirely surprising. Yes, we shortened it up. I know it's different from what's contemplated under the local rules. But Your Honor, we only did it because we want to know, when this sale closes, that we get paid off.

The DIP lender is going to credit bid, they're going to put in their cash. So the cash is going to be there, it's going to be in the estate. And we'd like it distributed, to the extent of our claims, to pay us off. We don't want to have to wait until the sixty-fifth or seventy-fifth day after the petition date if the outside closing date is going to be January 20th. The sale closes, we want to be paid off, and we just want to be out of it.

And by the way, Your Honor, we're just a commercial bank here. Frankly, our client is a successor-by-merger to the original bank that entered into the transaction. But this is not a super complicated loan transaction. It's a standard loan agreement, security agreement, trademark security agreement. The UCCs are on file, everything is valid. We don't see that there is any basis to challenge.

Obviously, a committee will be appointed, they will have a chance to take a look at it. If they want to come to talk -- come and talk to us prior to the final hearing and explain to us why they need more time, we're willing to listen.

But in the meantime, I think, under the circumstances, if Your Honor does agree to a sale hearing towards the end -- or middle or towards the end of January, we'd just like to tie the challenge period for purposes of this interim order so that it's a few days prior, so that we know if there is a problem. If there is some issue, someone raises an issue, we want to know going into the sale hearing that there is -- that there is the issue.

And the issue on standing, I mean, I think it's very standard. Actually, I do a lot of DIP financings in Delaware. It's very standard at the interim order to simply say that no one has standing and you have to get standing in order to assert a claim that you otherwise don't have

standing for. So now the committee may come back and say, well, you know, we want to be able to simply file a motion for standing by the challenge deadline, and that will be good enough for some period of time until the Court resolves that motion.

And we might agree to that, Your Honor; we might now. It depends on where we are in the sale process and whether or not the committee actually raises something that's challengeable, that has any merit whatsoever. We don't really see it right now because it's simply a commercial banking transaction, not a lot of money, three and a half million dollars and that's it.

So that's our perspective, is we would like Your Honor to tie in the challenge period to the sale, whatever you ultimately set, and people have to have standing by then in order to assert a proper challenge, or we can address it at the final hearing. But for purposes of the interim order, we'd just like to enter it like it's usually entered, frankly, an interim DIP order.

So that's our perspective, Your Honor. I just wanted to throw that out there. If you have any questions about any of the specific provisions in the order, I'm here to answer them as best I can.

THE COURT: Thank you.

Well, on that particular issue, I am going to enter

the interim order the way I usually enter it, which is in accordance with the rules, and I'm not going to shorten the period. I don't think I've done that yet. If I have, it's been a one-off.

But I actually don't see the need to do it here at all because I recognized and actually somewhat assessed the situation the same way you did, Mr. Litvak. And the bank had its alternatives, and this is the best alternatives it's decided for itself, in terms of the use of cash collateral and the *pari passu* liens.

But in terms of shortening the period, I don't see the need to. If this -- even if this sale is only on the, I'll say expedited schedule that's being requested, those funds, when they come into this estate, they will be held. The bank will have its lien on it and they will be held and not disbursed until the lien issue is resolved.

And from what you're saying, it's not surprising. You're saying this is a commercial loan that was in place several years before the petition date, it's been fully documented. I think the committee can assess it. And if what you're saying is true, it -- then it behooves the committee, in fact, to move quickly and to look at the loan, so that interest can stop accruing and it can be paid and there is more left over for whomever it's going to be in this very case so far who's going to be entitled to funding.

So I don't see a reason here. The bank is not credit bidding; again, not surprising, given that it's a commercial bank and it's a commercial loan. And those funds will be held, they will not be disbursed until it's determined who is owed the funds.

And so I'm going to keep the period at this time at the -- as it's set out in the rules. And I would encourage you to speak with committee counsel, if we have a committee, to explain to them exactly why it is that they should take a look at this and get the matter behind them, so that interest and fees stop accruing. So that's how I'm going to handle that issue.

As far as the "obtain standing" language, it's -- you know, we see different versions of this. And it can stay in there. I will say that it can tend to slow things down because, if the committee has filed a motion for standing and I haven't decided it, I'm going to extend the time period until I have time to decide it. So it sometimes slows things down, but I will also say that these things usually get resoled. So I'll let that play out however that's going to play out, but I don't have a particular concern about the "obtain" language, so that can stay.

Let me see where I do have questions then.

MR. MILLER: Your Honor?

THE COURT: Yes.

MR. MILLER: I have to admit there is an error that you picked up on before in the order. Paragraph 8(a) should have specific language with respect to PACA. We can add that back in, in an interim -- I mean in an amended form of this order --

THE COURT: Okay.

MR. MILLER: -- if Your Honor is willing to approve it at some point.

THE COURT: Okay.

MR. MILLER: There was also like some minor edits, but they are all fairly minor.

THE COURT: Okay.

MR. MILLER: They're sort of scriveners errors.

MR. LITVAK: Yeah, on that one -- on that issue, Your Honor -- and I don't have the latest redline that was presented to you, but I have the language that was supposed to go in there because I was the one that actually proposed it to the attorney for the vendor that was asserting a PACA claim.

And basically, what we did there is, in 8(a)(ii), where it refers to "junior liens," and it basically says that the DIP liens are not priming -- they're coming in junior, that the DIP liens are going to be junior liens *pari passu* with the Banc of California, we're both going to be junior as to all property of the debtors' estates that's subject to

valid, perfected, and non-avoidable liens in existence as of the petition date, other than the Banc of California liens.

And then where we -- we were going to add there:

"-- including, without limitation, any valid, perfected, and enforceable statutory liens or related claims under the Perishable Agricultural Commodities Act or applicable state law."

To make it clear that the DIP liens and the adequate protection is going to be junior to any of those preexisting liens, to the extent that they're valid.

And I see Mr. Schultz, who's the other attorney who we negotiated this, has just put his camera on.

THE COURT: Mr. Schultz.

MR. SCHULTZ: Good afternoon, Your Honor. Nathan Schultz on behalf of -- I'll find the name of the creditor in just a second -- I filed a notice of appearance (indiscernible) but I did fully negotiate this language with counsel (indiscernible) was what we landed here (indiscernible) what Your Honor heard before. So just to say that, yes (indiscernible)

THE COURT: Okay. So I take it we have agreement, it's just a matter of getting the language into the order, and then those claims will be sorted out if they need to be at the appropriate time. Okay. Thank you. Okay.

MS. MIELKE: What is helpful, Your Honor? Do you

want to ask specific questions or should we go through?

THE COURT: I'm going to ask specific questions. I'm going -- I'm looking at what was I guess sent over this morning. It looks like it's Version 3. I don't know what version you all are on. But I want many changes made to this, and that's where I have my -- well, I'm looking at two versions, actually, of comments.

Well, let me ask to confirm. The pre-petition loan, Winc, Inc. is one of the borrowers, right?

MS. MIELKE: Yes.

THE COURT: Okay.

MR. LITVAK: My understanding, Your Honor, just to clarify, that two out of the three debtors are borrowers on that pre-petition loan: Winc, Inc. and BWSC, LLC.

THE COURT: Okay. I ask because I want to make sure we don't have an LLC issue with respect to DIP financing and the ability to challenge. And as long as I've got one incorporated entity, then I'm comfortable that I don't have an LLC issue.

MR. LITVAK: Okay. Thank you, Your Honor.

THE COURT: Okay. The idea, obviously, is that the challenge period is not illusory.

General question. Does the DIP collateral include anything that the pre-petition lender did not have a lien on pre-petition, other than, obviously, avoidance actions, which

are being requested?

UNIDENTIFIED: I'm sorry. Can you ask that question again, Your Honor?

THE COURT: Yeah. Is there anything -- and it maybe actually goes more to the pre-petition adequate protection. But is there anything that is part of the DIP collateral that was not liened up pre-bankruptcy? A better way to put it.

(Participants confer)

MR. LITVAK: Your Honor, maybe I should address this on behalf of the pre-petition lender.

THE COURT: Uh-huh.

MR. LITVAK: Your Honor, we have a blanket lien. Could the committee -- because you know, we're on the committee's side a lot -- come up with something like commercial tort claims, for instance? Yes. And would those be picked up now? Yes. In the DIP collateral, we're picking up everything in the DIP collateral. The only thing that's carved out is stuff that's already subject to senior -- or valid liens, which we talked about, like the PACA liens, we come in junior to those, and then proceeds of avoidance actions, which are subject to entry of final order.

THE COURT: Okay.

MS. MIELKE: The only reason I pause, Your Honor, is there is some IP in -- up in one of the Lost Poet

entities, but it is under the original credit agreement, it is collateral -- or it is an asset of Lost Poet. But I don't think there was ever an agreement filed to make that particular subsidiary a guarantor under the agreement. But the agreement does require that and there are all sorts of obligations, so I think it probably is included.

MR. LITVAK: Well, we have a lien, in any case, Your Honor, on the equity in that entity.

MS. MIELKE: That's right.

MR. LITVAK: I don't know if there are any claims there. But if there's IP there, it would flow up. I'm not aware of any significant creditor claims there, but debtors' counsel can correct me.

MS. MIELKE: That's correct. There are no -- I'm not aware of any claims at that entity.

THE COURT: Okay.

(Pause in proceedings)

THE COURT: Okay. The first comment that I have that wasn't addressed is Paragraph 3 on Page 15, "Authority to Execute and Deliver Necessary Documents." And I guess this may be the first time this appears, it's the first time I marked it. It talks about the DIP loan documents.

The only thing I have is a termsheet and that's the only thing that anybody has. I don't know at this point if you're contemplating still an agreement, but I'm not going to

bless some agreement that I haven't seen and that, actually, more importantly, hasn't been filed so others can see it.

MS. MIELKE: We were -- I -- we tried to be very careful with this language, Your Honor. I believe that there is some language in the beginning that references the DIP loan documents. I think we've asked for authority to enter into the DIP loan documents. But I don't think that you are blessing a credit agreement that hasn't -- that does not exist.

And those documents, it's Page 2, in Paragraph (b):

"-- authorizing the debtors to execute any other documents, agreements, and instruments delivered pursuant thereto or executed or filed in connection therewith, all as may be reasonably requested" -- Blah, blah, blah, "DIP loan documents."

So, as far as I'm aware, that is what we have asked for. I don't think we've -- I don't think there's a paragraph, unless someone else would like to correct me, that expressly approves a credit agreement.

(Participants confer)

THE COURT: No. But it does use that -- it does then use that term consistently throughout the next -- this Paragraph 3 and then in Paragraph 4, about being, you know, binding obligations under DIP loan documents.

MR. MILLER: Your Honor, Curtis Miller for the

record.

I think it must have come out inadvertently in some of the versions that went past. But there was intended to be -- no one is seeking to have you pre-approve DIP -- full DIP credit agreements today. We're lending on a termsheet; you're approving a termsheet.

THE COURT: Uh-huh.

MR. MILLER: We'll put in some language at the end of Paragraph 3 which makes clear that you are not approving a credit agreement that is not before you.

THE COURT: Okay.

MS. MIELKE: I do --

THE COURT: And as long as everyone has that understanding here --

MS. MIELKE: I do think --

THE COURT: -- and I --

MS. MIELKE: -- we were asking for authority to enter into that agreement, Your Honor, to the extent it's consistent. But we, I think, can work on the language there.

THE COURT: Okay.

(Pause in proceedings)

THE COURT: Okay. Paragraph 6, which deals with the fees of the DIP lender and pre-petition. This has me approving fees, both those that were paid pre-petition and those that are yet to be paid. Why should I be approving

what was done pre-bankruptcy.

MR. MILLER: Your Honor, so this is split -- there -- we do have the fee procedures, obviously; I believe it's Paragraph 9.

THE COURT: Uh-huh.

MR. MILLER: So, obviously, there are fees that are incurred in connection with getting to this point on behalf of the DIP letter, putting it in the termsheet, putting it into the DIP order.

This is fairly customary in my experience, where we have, as of today, you are approving the fees that we have accrued up to this date. As part of the interim DIP closing, we will get paid those fees and expenses. And then, from here on out, from the interim order forward, we will be sending out the notices, as you typically see -- you know, I believe it's a ten-day notice period where we send it to Ms. Leamy and to the other notice parties. And then, if no one objections, those get paid; and, if there is an objection, we come back before you, Your Honor.

THE COURT: I don't know that I've actually approved them. But it actually -- the question may also go more to the pre-petition secured lender than the DIP lender on this. Again, I guess how are these getting paid. I don't know what that amount is. But are they in the budget?

MR. MILLER: Well, the pre-petition lender's non-

professional fees, those are -- they're not getting paid out during the case, so they are accruing, but they're not being paid. And then Mr. Litvak's fees will get paid pursuant to the notice procedures in the case.

MS. MIELKE: And in terms of -- to answer your question, Your Honor, on the budget, we are actually in the process of working through a revised budget, we just couldn't get to it today in time. So we anticipate working through some of those issues and filing a revised budget probably later this week.

MR. LITVAK: Your Honor, if I may. With respect to the pre-petition secured lender, our client actually prepared an accounting of their claim as of the petition date, which included the fees. We were not involved pre-petition; they just brought us in after the bankruptcy. And it was a very small number, as I recall, in the accounting with respect to pre-petition legal fees. So that was -- it was not a huge number, Your Honor.

THE COURT: Well --

MR. LITVAK: We just didn't -- we didn't want to go through the reporting procedures with respect to those pre-petition fees, whoever that was, some prior firm, probably not a bankruptcy firm, to get all that together. So we just wanted those -- you know, in my experience, it's not unusual to have the pre-petition fees of the lenders simply paid out

because that's what's accrued, that's what -- as of the petition date, as part of our claim.

THE COURT: Okay. Well, this provision says that they're authorized and directed to be paid in accordance with the documents, which I suspect doesn't wait until the end of the case and doesn't wait until your claim is resolved and makes them fully earned and non-refundable as of the date of this order, prior to a challenge period.

So I don't have a problem with the concept that the fees that are owed under the pre-petition credit agreement, I think as you said earlier, to the extent you're over-secured, are paid. They may be part of the claim. Interest is entitled to be paid. But we're in the middle of a challenge period, and I'm not going to enter an order that approves them and makes them payable and non-refundable. But they can be part of the claim and I have no problem with that.

I don't know that I have to approve them today, either. I don't see a basis or a reason to really do that. And I wouldn't do it, I don't think I've done it for pre-petition fees when we're in the middle of a challenge period. It's certainly not something --

MR. LITVAK: I think that's fine. That's fine, Your Honor. I'm sorry to -- if I interrupted.

THE COURT: That's okay.

MR. LITVAK: That's fine. I think you'll see as

you get to the adequate protection provisions, that there are provisions in there for our post-petition fees to be paid on a monthly basis as we go forward, subject to a notice period. I would like to keep that provision in there if acceptable to Your Honor, but I think everyone understands we don't -- we can take out the final and indefeasible part about that, you know, it's subject to challenge. That's fine.

THE COURT: Okay.

MR. MILLER: Your Honor, on that same provision, speaking with my co-counsel, we can also just accrue our pre-petition fees and expenses because we're really just paying ourselves. You know, my firm will always want me to get paid before the end of the year, but we can wait on that minimal period.

THE COURT: There's some partners who are going to be disappointed, yeah.

MR. MILLER: That's right.

THE COURT: Okay. Thank you.

(Pause in proceedings)

THE COURT: Quick question. In Paragraph 8(c), it's on Page 21 of the blackline that I'm looking at. And it's the second -- yeah, second sentence:

"Any provision of any lease, loan document, easement, use agreement, et cetera, that requires the consent or approval of a landlord or a payment

of fees to a governmental entity or a non-governmental entity or any other purpose" --

People want me to find that that has no force and effect. And how can I do that and how can I do that on an interim basis?

(Pause in proceedings)

MS. MIELKE: Certainly, Your Honor, we could make it subject to final ...

(Pause in proceedings)

MS. MIELKE: I -- go ahead.

MR. MILLER: Your Honor, on that one, with respect to leases and, you know, contracts and things like that, the way we've dealt with it before is change it to the proceeds of them, rather than putting it on the actual agreement themselves.

THE COURT: Uh-huh.

MR. MILLER: So we'd suggest changing it to that.

THE COURT: Okay.

MR. MILLER: And then, with respect to the others, we could make it subject to the final.

THE COURT: I think it needs to be. I'm not sure if I have authority to do some of what's in here or not, but I certainly don't think I can do it on an interim basis. So notice it out and see what we get.

MR. MILLER: So we'll split it up with that --

THE COURT: That's fine.

MR. MILLER: Thank you, Your Honor.

(Pause in proceedings)

THE COURT: In Paragraph 9, where we have the list of code sections that are being primed, I see that 506(c) is subject to entry of a final, but maybe five -- consistent with the PACA/PASA thing, what about 546(c) and 546(d) --

MS. MIELKE: Okay.

THE COURT: -- and whether they should be subject --

MS. MIELKE: I think the --

THE COURT: -- at least to a final order for parties who may have reclamation rights? Which I don't know, again, this industry and how it works. And I'm not even sure if 546(d) would even apply to this industry, but you've got it in here, so ...

MR. MILLER: Your Honor, 546(c) and (d) being subject to the final are okay on behalf of the DIP lender. I think Mr. Litvak has to say if that's okay with him from a pre-petition lender perspective.

MR. LITVAK: That's fine, Your Honor.

THE COURT: Okay. Thank you.

(Pause in proceedings)

THE COURT: I notice that there is a definition of "diminution claim." I generally don't like that. It is what

it is. But this didn't seem that it's necessarily going outside the bounds. I'll deal with it if I ever have to deal with what a diminution claim is, which, in eight years, I haven't yet had to deal with.

Okay. And then on the adequate protection superpriority claim in the new Paragraph, I guess 12(a), for 546(c) and (d), then I would like the same qualification there.

MS. MIELKE: Yes, Your Honor.

THE COURT: Okay. And I see the paragraph, I guess it's 12(c), that Mr. Litvak was referring to, in terms of the professional fees on a go forward basis subject to a process, and I'm okay with that. And we'll deal with it -- I don't think this says that it's indefeasible. So, to the extent that there is some successful challenge, we'll deal with it. Okay.

(Pause in proceedings)

THE COURT: In terms of the restriction on use of funds in Paragraph 13, I think some of these are broader than they should be.

(a) is a request to obtain post-petition loans or other financial accommodations. I recognize that may be a default under the DIP credit agreement. But why isn't -- just, if it's a default, it's a default, and it can be called. Why isn't that sufficient?

MR. MILLER: Your Honor, we added in -- because we were aware of this issue with respect to, you know, certain other provisions that, you know, you'd see in other DIP orders that would limit the debtor's ability to take action.

THE COURT: Uh-huh.

MR. MILLER: In this one, however, we're talking about the use of our money, so we don't think we should have to fund or, you know, give our money to allow someone to sue us effectively.

THE COURT: Well, that I agree with. I agree that you should -- nobody should be able to sue you, except for the limited -- and it probably doesn't even apply to you all necessarily -- investigation period.

MR. MILLER: Right.

THE COURT: And --

MR. MILLER: But if they're seeking to get other loans or financial accommodations that either prime us or are *pari passu* with us, we don't think they should be able to use our funds to do that, either.

Now there is a proviso at the end that says, if it's going to pay us off in full, have at it.

THE COURT: Right.

MR. MILLER: And we're here because the debtors had no other option. So then it's not. But otherwise, we don't think they should be able to use our funds in that scenario.

Like I said, we did -- we're aware of Your Honor's authority on that and precedent on that and we built that into other provisions in the order, but we did not put it here for that reason.

THE COURT: Okay. I'll leave it in on an interim basis.

MR. MILLER: Thank you, Your Honor.

(Pause in proceedings)

MR. LITVAK: Your Honor, I apologize. If I may interrupt for a moment.

THE COURT: Mr. Litvak.

MR. LITVAK: As we're getting to Paragraph 14, which deals with the challenge period -- and I know -- I understand the Court's ruling with respect to changing that back to 65 days. I guess it would be 65 days after formation of the committee. I would just ask that, in case the committee is not formed or if there is any delay in forming the committee, that there is some outside date there, maybe 75 days from the petition date is pretty standard, for other parties-in-interest to assert a challenge.

THE COURT: What's the rule?

MS. MIELKE: Seven --

THE COURT: I'm forgetting.

MS. MIELKE: It's --

THE COURT: But it's not --

MS. MIELKE: It's seven --

THE COURT: It's not that sixty-five-day thing.

MS. MIELKE: It's 75 days from entry of the interim order.

THE COURT: Seventy-five days from entry of the interim order for all other parties, other than the committee?

MS. MIELKE: It's for --

THE COURT: And what's --

MS. MIELKE: -- everybody.

THE COURT: Is it for everybody --

MS. MIELKE: It was --

THE COURT: -- now?

MS. MIELKE: Yeah. The local rule was changed about 2 years ago, Your Honor, to make it just a blanket 75 days of the interim order.

THE COURT: Okay. So that will be put in there, whatever the rule is.

MS. MIELKE: Which is actually how it was, so we'll just revert it back, Your Honor.

THE COURT: Okay.

MR. LITVAK: And the other question that I have, Your Honor -- and I know you mentioned that you would like, if the closing occurs prior to the running of that challenge deadline, you would like the money to be held in reserve.

The question that I have, Your Honor, is: Could we provide for that money to be distributed to Banc of California, subject to the challenge rights?

And I ask that because it is such a small cushion, as I mentioned before. If it's just a ten-million-dollar bid, we're worried, if the money stays in the debtors' estates, the interest will continue to accrue and our fees will continue to accrue, so we'll be eating into that cushion, and it might be a very small cushion. I just want to make sure that there is enough money to cover that.

And one way to do that would be to distribute the money right away to the client, be subject to disgorgement. We're -- you know, we're a regulated bank, obviously. So, if there is a successful challenge and we have to give some of that back or all of it back, they could do that.

So that's why I ask: Is there -- or can we reserve on this issue until we get closer to the sale hearing and then deal with it, in terms of disposition of proceeds?

THE COURT: Yes. And I -- again, I think it's not an unreasonable -- it's not unreasonable to think about these issues and the best way to approach them. And I would think a committee would be amenable to that discussion.

So I don't think it belongs in the interim financing order, but I think it's an appropriate discussion to be had as we get closer to either the sale or to have a

discussion with the committee when they have -- when they're formed, if they're formed, but I don't think it belongs here. But I'm not precluding that, I'm not precluding that at all.

MR. LITVAK: Thank you, Your Honor.

(Pause in proceedings)

THE COURT: Okay. I see the release provision in Paragraph 16, and it is subject to the entry of the final order, so I'm fine with that, it being in here and being requested at the final time.

One thing I would emphasize here is to make sure that, if there is a release in the final order, it is not prospective, it can only account for what has happened to that date.

(Pause in proceedings)

THE COURT: Okay. I'm sorry for the delay. Some of my comments that I had written went before there was an agreement, so I'm trying to exclude those.

(Pause in proceedings)

THE COURT: Okay. I think, in the remedies paragraph, 17, little -- 17(ii).

(Pause in proceedings)

THE COURT: The second -- it's (2)(c), maybe? It's got a lot of the same -- (2)(c), which is what can happen -- it looks to me, in (2)(c), like there's a setoff prior to the end of the remedies notice period and everything should be

held in abeyance pending the remedies notice period and everything should be held in abeyance, pending the remedies notice period.

MS. MIELKE: Your Honor, if --

THE COURT: Except you can stop use of cash collateral, that can happen. You can terminate use of cash collateral. You don't have to lend anymore. But in terms of remedies, that shouldn't happen until the remedies notice period is over. And I'm not sure it reads that way. It might, but I'm not sure it does.

MS. MIELKE: I think it says subject to five days prior written notice. So I would -- the way I read it, Your Honor, but I'm -- there's many opinions here today. I think that notice would have to expire before the DIP lender could foreclose.

THE COURT: It's really going to be the pre-petition lender at this point who's going to set off, right?

MS. MIELKE: That -- right.

MR. MILLER: It's actually both because we both have rights in that -- those cash collateral accounts, those --

THE COURT: Yeah, but --

MR. MILLER: -- controls accounts.

THE COURT: -- they've got the account in their bank.

MR. MILLER: They actually do have possession of it.

THE COURT: So ...

MR. MILLER: But we have Your Honor's order, so ...

(Laughter)

(Participants confer)

MR. MILLER: But I believe the way you're --

THE COURT: Is it --

MR. MILLER: I believe the way it was just read to you is correct. It's subject to that five-day remedies period.

THE COURT: Okay. As long as we're clear on that. And if you all can take a look at it and make sure it reads that way. I'm not concerned about it between now and the final, but let's just make sure it reads that way.

MR. MILLER: Mr. Litvak, do you agree with my reading?

MR. LITVAK: I do, yes, Your Honor. I was going to say that's --

THE COURT: How you read it.

MR. LITVAK: We're not going to be --

THE COURT: Okay.

MR. LITVAK: -- setting off or effectuating any kind of a transfer of any of the money or anything like that, certainly not prior to the expiration of the remedies notice

period following an event of default.

THE COURT: Okay. Now here's an interesting provision that I haven't had before in my orders that -- at least that I've noticed. On para -- Page 34, it's in (iv) now, same paragraph, last sentence, which talks about the burden of proof at a hearing during the remedies notice period. And I'll confess, I haven't thought about it before. And again, I don't think it's been in one of my orders before. And it talks about:

"The debtor, the creditors' committee, or the UST has the burden at any hearing on any request by them to reimpose" --

It wouldn't be reimpose.

"-- or continue the automatic stay" --

It might be continue.

"-- or to obtain any other injunctive relief."

I don't know who ought to have the burden of proof on that hearing and I'll say I haven't had one in eight years, so I've just given no thought to this at all.

(Participants confer)

MR. MILLER: I mean, I think Ms. Mielke was just going to say exactly what I was. The movant, who will have to -- because this order is going to provide there's a termination or a default date, right? We'll provide the five-day notice.

THE COURT: Uh-huh.

MR. MILLER: If someone -- if that five -- period passes and no one stops it by applying for relief from Your Honor, we'll have stay relief, we'll be able to take remedies.

THE COURT: Correct.

MR. MILLER: So that the movant will have the burden. What we're just trying to do is avoid a separate sideshow fight on that because we did not put in the language that says you can only raise this specific issue because we know you hate that.

THE COURT: Yes. Thank you.

MR. MILLER: But what we did leave in was this language to avoid that alternate issue.

THE COURT: Okay. Well, it's interesting. I haven't seen it before. No one is objecting to it here. We'll see if anybody objects to it at final, but I'll keep it in for now.

MR. MILLER: Thank you, Your Honor.

(Pause in proceedings)

THE COURT: Okay. Paragraph 21, application of the collateral proceeds. How does that paragraph, and in particular the first sentence, how does that mesh with the remedies notice period?

MS. MIELKE: It is ...

(Pause in proceedings)

MS. MIELKE: It is -- it does say to the -- it's qualified to the extent required by this interim order and the DIP loan documents, Your Honor. I mean, I suppose that language could be tweaked a little bit. But I think, as it is, it doesn't do violence to the remedies period.

I guess you could say "to the extent consistent with," instead of "required by," but I defer to the lenders there.

MR. MILLER: Your Honor, I don't think that language changes anything. And you know, if you want to say "to the extent consistent with this interim order," I think that's fine because I -- at least as I understood, your question was we need to have the five-day remedies period built into here. And we can -- and we can just make that express, if that's Your Honor's concern, but that doesn't concern me. I mean, we're not trying to jump the -- that period --

THE COURT: Yeah, I'm --

MR. MILLER: -- through this --

THE COURT: -- just trying --

MR. MILLER: -- language.

THE COURT: -- to figure out how it works.

MR. MILLER: And we can make that, you know, that it is subject to the five-day notice period, remedies period,

whatever it is.

(Participants confer)

THE COURT: Okay.

(Pause in proceedings)

THE COURT: Okay. Paragraph 22, access to collateral. I don't know what rights the pre-petition lender currently has under any of the debtors' documents. I'm not sure what authority I have to let somebody else, for example, use the debtors' license privileges or be on the landlord's premises without permission. There probably -- there could be some rights, state law rights. But I don't know what authority I have to vary whatever the contractual and state law rights are with respect to access to collateral.

MS. MIELKE: I believe that there's a proviso that says that, subject to lienholders, landholder -- landlords, or licensors' rights under applicable law. Does that address your concern, Your Honor?

THE COURT: And where does it say that?

MS. MIELKE: It's the middle of the first paragraph on Page 40?

(Pause in proceedings)

THE COURT: Okay. I think that language is doing a lot of work, but it can stay in and we'll see if there is an issue on final. Make sure the appropriate people get notice of it, though.

MS. MIELKE: Yes, Your Honor.

(Pause in proceedings)

THE COURT: Okay. Paragraph, I guess it's 27 now, new 27, successors and assigneds. It has that language in it, "The DIP loan documents shall be binding on the debtors." And there, I think, again, we don't have those documents.

MS. MIELKE: Thank you, Your Honor. We'll plan to change that with a proviso to the "DIP loan documents" definition. But if that doesn't work, then we'll make a --

THE COURT: You --

MS. MIELKE: -- revision here, as well.

THE COURT: You can make it work. And I would just look throughout because I'm sure I missed some.

MS. MIELKE: Yeah. I think that's why maybe making it in the defined term might be the better way to go.

THE COURT: Okay.

(Pause in proceedings)

THE COURT: Okay. Those were my comments and questions.

I do appreciate and I did notice that some of the -- well, first of all, I noticed the relatively short -- relatively fewer page numbers, pages. I appreciate that. And I did notice that some of the things that I do not like to see in interim DIP orders were not in here, so I do appreciate that.

MR. LITVAK: Your Honor, if I may?

THE COURT: Yes.

MR. LITVAK: Will the final hearing on the DIP also be January 6th at 2 p.m. eastern time?

MS. MIELKE: No.

THE COURT: So I don't know. I think we got requests for -- different requests for different times.

MS. MIELKE: Right. Your Honor, you beat me to it. So the next thing on the list is scheduling. Our interim period is slated through the week of the 19th, so I think that is when we need some additional relief.

You know, to the extent that are parties later on down the line that take issue with that being final at that time. I mean, I guess we could address that, but I think we do need to be in front of Your Honor that week for additional relief.

We have already indicated that we'll plan to file a bid procedures motion, hopefully tomorrow, and we will try to shorten notice on that. That is the date that we are -- the 22nd is the date that we are hoping to circle for both the final DIP hearing, as well as the bid procedures hearing, understanding we still need to file a motion to shorten, we get it.

THE COURT: Is that the -- is that regular notice on the final DIP?

MS. MIELKE: It's --

THE COURT: It is?

MS. MIELKE: -- ten day, I think.

UNIDENTIFIED: Fourteen days.

MS. MIELKE: Is it 14?

(Participants confer)

MS. MIELKE: I don't know what today is, but ...

(Participants confer)

THE COURT: Okay. So that would be regular notice on a final DIP, but we would need to shorten the period on the bid procedures?

MS. MIELKE: That's right.

THE COURT: Okay. Well, I'll give you time on the 22nd. If parties really have an issue, I'll hear about it at -- then. But let's make it the morning, make it 10 on the 22nd, for the final DIP and bid procedures. And that -- bid procedures really does mean that you get your motion filed.

MS. MIELKE: Yes, Your Honor.

THE COURT: And I know that you'll work with the committee --

MS. MIELKE: We will, of course.

THE COURT: -- if they need additional time to object to anything.

MS. MIELKE: Your Honor, I didn't get a chance to do the usual adulations when I was starting, but I would be

remiss if I didn't say that the parties worked very well in the last few days together and have been very commercial to get this over the finish line, so our thanks from the debtors to get it done.

THE COURT: Okay. Well, I appreciate it, as well, and am pleased that you were able to get Banc of California into the loop, which made this a much easier hearing than it would otherwise have been. And I do recognize the economics of this case, which is what it is. And we hope, of course, that any auction will be robust and can bring more money, but we'll see what happens.

I will approve the interim DIP financing requested, both the DIP financing and the use of cash collateral on an interim basis on the terms that we have discussed, as revised through the colloquy we've had. It's clear that the debtor needs money to meet, not only its restructuring expenses, but its operational expenses and the ability to keep its workforce intact and keep its customers in inventory. And the -- I reviewed the budget coming in and I have the declaration of Ms. Brault in support. And based on that, I will find that this interim financing is necessary.

In terms of adequate protection, the bank has now consented to use of cash collateral and to *pari passu* priority, in terms of financing, so it is consensual and, again, necessary. So I think I have the record to be able to

approve the financing on an interim basis.

Is there anything else we need to do today?

MS. MIELKE: Thank you for your time, Your Honor. I don't think so.

MR. MILLER: Thank you, Your Honor.

THE COURT: Thank you. We'll look forward to --

MR. LITVAK: Thank you, Your Honor.

THE COURT: -- revised orders. Please let Ms. Johnson know when you have them filed.

MS. MIELKE: Yes, Your Honor, we will.

THE COURT: Okay. Thank you.

UNIDENTIFIED: Thank you, Your Honor.

THE COURT: We're adjourned.

(Proceedings concluded at 5:00 p.m.)

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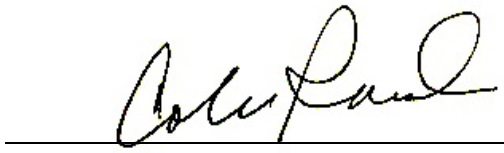
CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



December 8, 2022

Coleen Rand, AAERT Cert. No. 341

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